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AN ACT

RELATING TO PUBLIC UTILITIES; REQUIRING PUBLIC UTILITIES AND RURAL ELECTRIC COOPERATIVES TO MAKE NET METERING SERVICES AVAILABLE TO CUSTOMERS THAT OPERATE FACILITIES THAT PRODUCE ELECTRICAL ENERGY FROM RENEWABLE ENERGY RESOURCES; CREATING AND CHANGING DEFINITIONS IN THE PUBLIC UTILITY ACT; PROVIDING REQUIREMENTS FOR CHARGES AND CREDITS FOR NET METERING; PROVIDING REQUIREMENTS FOR SAFETY AND PERFORMANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 62-3-3 NMSA 1978 (being Laws 1967, Chapter 96, Section 3, as amended) is amended to read:

"62-3-3. DEFINITIONS.--Unless otherwise specified, when used in the Public Utility Act:

A. "affiliated interest" means a person who directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with a public utility. Control includes instances where a person is an officer, director, partner, trustee or person of similar status or function or owns directly or indirectly or has a beneficial interest in ten percent or more of any class of securities of a person;

B. "average operating margin" means the average of the operating margins of a rural electric cooperative over the past five years;

1 C. "clean generation source" means a facility that
2 produces electrical energy:

3 (1) generated by the use of low- or
4 zero-emissions generation technology with substantial
5 long-term production potential;

6 (2) generated by the use of a renewable
7 energy resource that may include a solar, wind, hydropower or
8 geothermal resource or by the use of a biomass resource such
9 as agriculture or animal waste, small diameter timber, salt
10 cedar and other phreatophyte or woody vegetation removed from
11 a river basin or watershed in New Mexico, landfill gas and
12 anaerobically digested waste biomass or hydrogen produced
13 from renewable sources used in fuel cells; and

14 (3) that is not generated by use of fossil
15 fuel or nuclear energy;

16 D. "commission" means the public regulation
17 commission;

18 E. "commissioner" means a member of the
19 commission;

20 F. "customer-generator" means a retail customer of
21 a public utility or rural electric cooperative who is also
22 the operator of a clean generation source;

23 G. "municipality" means a municipal corporation
24 organized under the laws of the state, and H-class counties;

25 H. "net metering" means measurement of the

1 difference between the electricity supplied to a
2 customer-generator by a public utility or rural electric
3 cooperative and the electricity that is generated by the
4 customer-generator and delivered to a public utility or rural
5 electric cooperative at the same point of interconnection
6 during a billing period;

7 I. "net metering revenue reduction" means the
8 difference between a rural electric cooperative's or public
9 utility's applicable tariff energy charge and the lower of
10 the avoided cost as filed with the commission or three cents
11 (\$.03) per kilowatt-hour, multiplied by the total number of
12 kilowatt-hours that the commission estimates has been
13 generated by all of the clean generation sources that are net
14 metered by the public utility or rural electric cooperative;

15 J. "operating margin" means the amounts received
16 or receivable from the furnishing of electric service by a
17 rural electric cooperative in excess of costs incurred in the
18 furnishing of that service;

19 K. "peak generating capacity" means the total
20 maximum rated output, in kilowatts, of a clean generation
21 source;

22 L. "person" means an individual, firm,
23 partnership, company, rural electric cooperative organized
24 under Laws 1937, Chapter 100 or the Rural Electric
25 Cooperative Act, corporation or lessee, trustee or receiver

1 appointed by any court. "Person" does not mean a class A
2 county as described in Section 4-36-10 NMSA 1978 or a class B
3 county as described in Section 4-36-8 NMSA 1978. "Person"
4 does not mean a municipality as defined in this section
5 unless the municipality has elected to come within the terms
6 of the Public Utility Act as provided in Section 62-6-5 NMSA
7 1978. In the absence of voluntary election by a municipality
8 to come within the provisions of the Public Utility Act, the
9 municipality shall be expressly excluded from the operation
10 of that act and from the operation of all its provisions, and
11 no such municipality shall for any purpose be considered a
12 public utility;

13 M. "rural electric cooperative" means a rural
14 electric cooperative organized pursuant to the Rural Electric
15 Cooperative Act;

16 N. "securities" means stock, stock certificates,
17 bonds, notes, debentures, mortgages or deeds of trust or
18 other evidences of indebtedness issued, executed or assumed
19 by a utility;

20 O. "public utility" or "utility" means every
21 person not engaged solely in interstate business and, except
22 as stated in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that may
23 own, operate, lease or control:

24 (1) any plant, property or facility for the
25 generation, transmission or distribution, sale or furnishing

1 to or for the public of electricity for light, heat or power
2 or other uses;

3 (2) any plant, property or facility for the
4 manufacture, storage, distribution, sale or furnishing to or
5 for the public of natural or manufactured gas or mixed or
6 liquefied petroleum gas for light, heat or power or other
7 uses; but the term "public utility" or "utility" shall not
8 include any plant, property or facility used for or in
9 connection with the business of the manufacture, storage,
10 distribution, sale or furnishing of liquefied petroleum gas
11 in enclosed containers or tank truck for use by others than
12 consumers who receive their supply through any pipeline
13 system operating under municipal authority or franchise and
14 distributing to the public;

15 (3) any plant, property or facility for the
16 supplying, storage, distribution or furnishing to or for the
17 public of water for manufacturing, municipal, domestic or
18 other uses; provided, however, nothing contained in this
19 paragraph shall be construed to apply to irrigation systems,
20 the chief or principal business of which is to supply water
21 for the purpose of irrigation;

22 (4) any plant, property or facility for the
23 production, transmission, conveyance, delivery or furnishing
24 to or for the public of steam for heat or power or other
25 uses;

1 (5) any plant, property or facility for the
2 supplying and furnishing to or for the public of sanitary
3 sewers for transmission and disposal of sewage produced by
4 manufacturing, municipal, domestic or other uses; provided
5 that the terms "public utility" or "utility" as used in the
6 Public Utility Act do not include any utility owned or
7 operated by a class A county as described in Section 4-36-10
8 NMSA 1978 either directly or through a corporation owned by
9 or under contract with such a county; or

10 (6) any plant, property or facility for the
11 sale or furnishing to or for the public of goods or services
12 to reduce the consumption of or demand for electricity or
13 natural gas that is a public utility under the definition
14 found in Paragraph (1) or (2) of this subsection;

15 P. "rate" means every rate, tariff, charge or
16 other compensation for utility service rendered or to be
17 rendered by a utility and every rule, regulation, practice,
18 act, requirement or privilege in any way relating to such
19 rate, tariff, charge or other compensation and any schedule
20 or tariff or part of a schedule or tariff thereof;

21 Q. "renewable energy" means electrical energy
22 generated by means of a low- or zero-emission generation
23 technology that has substantial long-term production
24 potential and may include, without limitation, solar, wind,
25 hydropower, geothermal, landfill gas, anaerobically digested

1 waste biomass or fuel cells that are not fossil fueled.

2 "Renewable energy" does not include fossil fuel or nuclear
3 energy;

4 R. "service" or "service regulation" means every
5 rule, regulation, practice, act or requirement relating to
6 the service or facility of a utility;

7 S. "Class I transaction" means the sale, lease or
8 provision of real property, water rights or other goods or
9 services by an affiliated interest to a public utility with
10 which it is affiliated or by a public utility to its
11 affiliated interest;

12 T. "Class II transaction" means:

13 (1) the formation after May 19, 1982 of a
14 corporate subsidiary by a public utility or a public utility
15 holding company by a public utility or its affiliated
16 interest;

17 (2) the direct acquisition of the voting
18 securities or other direct ownership interests of a person by
19 a public utility if such acquisition would make the utility
20 the owner of ten percent or more of the voting securities or
21 other direct ownership interests of that person;

22 (3) the agreement by a public utility to
23 purchase securities or other ownership interest of a person
24 other than a nonprofit corporation, contribute additional
25 equity to, acquire additional equity interest in or pay or

1 guarantee any bonds, notes, debentures, deeds of trust or
2 other evidence of indebtedness of any such person; provided,
3 however, that a public utility may honor all agreements
4 entered into by such utility prior to May 19, 1982; or

5 (4) the divestiture by a public utility of
6 any affiliated interest that is a corporate subsidiary of the
7 public utility;

8 U. "corporate subsidiary" means any person ten
9 percent or more of whose voting securities or other ownership
10 interests are directly owned by a public utility; and

11 V. "public utility holding company" means an
12 affiliated interest that controls a public utility through
13 the direct or indirect ownership of voting securities of that
14 public utility."

15 Section 2. A new section of the Public Utility Act is
16 enacted to read:

17 "NET METERING SERVICE.--

18 A. If a public utility or a rural electric
19 cooperative makes net metering services available to a
20 customer-generator with a clean generation source that the
21 public utility or rural electric cooperative serves, the
22 customer-generator shall pay all costs for the acquisition
23 and installation of the necessary metering equipment and
24 customer-owned facilities required by a public utility or
25 rural electric cooperative for interconnection. The

1 customer-generator shall also pay all costs incurred by the
2 public utility or rural electric cooperative for net
3 metering, including costs for equipment or services that are
4 necessary to meet safety and performance standards pursuant
5 to the Public Utility Act.

6 B. A public utility or a rural electric
7 cooperative may charge a customer-generator for the
8 installation of any metering equipment required for net
9 metering that is in addition to equipment that is required
10 for the rate tariff under which the customer is normally
11 served. A public utility or a rural electric cooperative may
12 install additional equipment that it deems necessary to meter
13 the total electricity flow in each direction. If the clean
14 generation source of the customer-generator has a peak
15 generating capacity of ten kilowatts or less, a party
16 requesting the additional equipment shall pay the cost of
17 additional equipment. If the clean generation source of the
18 customer-generator has a peak generating capacity exceeding
19 ten kilowatts, the public utility or rural electric
20 cooperative may require the customer-generator to pay the
21 cost of the additional equipment.

22 C. Costs imposed by a public utility or a rural
23 electric cooperative on a customer-generator shall not exceed
24 those necessary to meet safety and interconnection
25 requirements pursuant to the Public Utility Act.

1 D. A customer-generator is responsible for costs
2 associated with operating and maintaining a clean generation
3 source of the customer-generator and for costs related to
4 modification of the clean generation source required for the
5 purposes of interconnectivity, safety and reliability.

6 E. A public utility or rural electric cooperative
7 shall make net metering available to a customer-generator
8 with a clean generation source with peak generating capacity
9 of ten kilowatts or less that meets the safety and
10 interconnection requirements pursuant to the Public Utility
11 Act.

12 F. A public utility that is not a rural electric
13 cooperative shall make net metering available to a
14 customer-generator with a clean generation source that meets
15 the safety and interconnection requirements pursuant to the
16 Public Utility Act and that has a peak generating capacity
17 exceeding ten kilowatts, but not exceeding one hundred
18 kilowatts; provided that making net metering available to
19 that customer-generator does not increase the cumulative peak
20 generating capacity of all clean generation sources on the
21 public utility's distribution system above one percent of the
22 average of that public utility's peak retail demand over the
23 past three calendar years.

24 G. A rural electric cooperative shall make net
25 metering available to a customer-generator with a clean

1 generation source that meets the safety and interconnection
2 requirements pursuant to the Public Utility Act and that has
3 a peak generating capacity exceeding ten kilowatts, but not
4 exceeding one hundred kilowatts; provided that making net
5 metering available to that customer-generator does not
6 increase the net metering revenue reduction above one percent
7 of the rural electric cooperative's average operating
8 margins.

9 H. A rural electric cooperative may allow, with
10 thirty days' notice to customers, additional net metering of
11 customer-generators beyond the limits imposed by Subsection G
12 of this section unless, within the thirty-day period after
13 notice, the cooperative receives customer protests from
14 customers representing a majority of the cooperative's load.

15 I. Once interconnected, net metering shall not be
16 withdrawn from a customer-generator on the basis of the
17 limitations specified in Subsections E through G of this
18 section.

19 J. The commission shall adopt rules for this 2005
20 act that shall become effective before June 1, 2006,
21 including uniform interconnection and safety standards
22 consistent with the requirements of Subsection C of this
23 section and the safety and performance standards of the
24 Public Utility Act that include application procedures,
25 reporting requirements for peak loads and operating margins

1 and provisions ensuring compliance and timely response by
2 public utilities and rural electric cooperatives, including
3 reporting requirements for disapproved applications, to
4 customer requests for interconnection."

5 Section 3. A new section of the Public Utility Act is
6 enacted to read:

7 "TARIFFS--CREDITS.--

8 A. An applicable tariff for electric service by a
9 public utility or rural electric cooperative to a
10 customer-generator shall be based on the applicable tariff of
11 the public utility or rural electric cooperative for
12 wholesale electric service.

13 B. A public utility or rural electric cooperative
14 shall provide a credit for net metering to a
15 customer-generator equal to the applicable tariff of the
16 public utility or rural electric cooperative for the
17 customer-generator's customer class with respect to the
18 customer-generator's production of electricity.

19 C. If a customer-generator's net aggregate bill
20 from the public utility or rural electric cooperative is less
21 than zero, a credit for net metering shall be carried over to
22 future bills of that customer-generator until the credit
23 balance equals zero.

24 D. A customer-generator shall not claim a credit
25 for net metering pursuant to this section from a public

1 utility or rural electric cooperative with respect to a clean
2 generation source pursuant to the Public Utility Act if the
3 customer-generator has claimed a credit for net metering from
4 another public utility or rural electric cooperative for the
5 same clean generation source."

6 Section 4. A new section of the Public Utility Act is
7 enacted to read:

8 "SAFETY, INTERCONNECTION AND PERFORMANCE REQUIREMENTS.--

9 A. A net metering system used by a
10 customer-generator shall comply with all relevant public
11 utility or rural electric cooperative safety and
12 interconnection requirements and all federal, state and local
13 safety and performance standards and codes.

14 B. Safety and interconnection requirements for
15 clean generation sources approved by the commission shall
16 comply with the standards of the institute of electrical and
17 electronics engineers for interconnecting distributed
18 resources with electric power systems.

19 C. A public utility or rural electric cooperative
20 may require a customer-generator, at that
21 customer-generator's expense, to provide lockable switching
22 equipment capable of isolating a clean generation source from
23 the public utility's or rural electric cooperative's system.

24 D. The public utility or rural electric
25 cooperative shall not be liable directly or indirectly for

1 permitting or continuing to allow interconnection of a clean
2 generation source or for an act or omission of a
3 customer-generator that causes loss or injury to a person or
4 property, including death of a customer-generator or a third
5 party. A customer-generator shall indemnify a public utility
6 or rural electric cooperative for damage to a person or
7 property and for any damage or loss incurred by a third party
8 or an heir or successor of that party as the result of the
9 installation or operation of a clean generation source.

10 Indemnification may include financial compensation or the
11 payment of additional charges of the public utility or rural
12 electric cooperative against the customer-generator.

13 E. A customer-generator shall notify its public
14 utility or rural electric cooperative and the commission of
15 the intent to install a clean generation source at least
16 sixty days before its installation on an application form
17 prescribed by the commission. The public utility or rural
18 electric cooperative shall approve or disapprove the
19 application and notify the customer-generator of its approval
20 or disapproval within thirty days of the public utility's
21 receipt of the application. The public utility or rural
22 electric cooperative shall notify the commission of its
23 approval or disapproval in accordance with the commission's
24 rules."

25 Section 5. Section 62-16-4 NMSA 1978 (being Laws 2004,

1 Chapter 65, Section 4) is amended to read:

2 "62-16-4. RENEWABLE PORTFOLIO STANDARD.--

3 A. A public utility shall meet the renewable
4 portfolio standard requirements, as provided in this section,
5 to include renewable energy in its electric energy supply
6 portfolio. Requirements of the renewable portfolio standard
7 are:

8 (1) no later than January 1, 2006, renewable
9 energy shall comprise no less than five percent of each
10 public utility's total retail sales to New Mexico customers;

11 (2) the renewable portfolio standard shall
12 increase by one percent per year thereafter until
13 January 1, 2011, when the renewable portfolio standard shall
14 reach a level of ten percent of a public utility's annual
15 retail sales in New Mexico and shall remain fixed at ten
16 percent for each year thereafter;

17 (3) the renewable portfolio standard
18 established by this section shall be reduced, as necessary,
19 to provide for the following specific procurement
20 requirements for nongovernmental customers at a single
21 location or facility, regardless of the number of meters at
22 that location or facility, with consumption exceeding ten
23 million kilowatt-hours per year. On and after
24 January 1, 2006, the kilowatt-hours of renewable energy
25 procured for these customers shall be limited so that the

1 additional cost of the renewable portfolio standard to each
2 customer does not exceed the lower of one percent of that
3 customer's annual electric charges or forty-nine thousand
4 dollars (\$49,000). The calculation of the additional cost of
5 the renewable portfolio standard to each customer shall
6 include the amount of the total net metering revenue
7 reductions, as defined by the Public Utility Act, that the
8 commission determines should be recovered from that customer.
9 This procurement limit criteria shall increase by one-fifth
10 percent or ten thousand dollars (\$10,000) per year until
11 January 1, 2011, when the procurement limit criteria shall
12 remain fixed at the lower of two percent of that customer's
13 annual electric charges or ninety-nine thousand dollars
14 (\$99,000). After January 1, 2012, the commission may adjust
15 the ninety-nine-thousand-dollar (\$99,000) limit for
16 inflation. Nothing contained in this paragraph shall be
17 construed as affecting a public utility's right to recover
18 all reasonable costs of complying with the renewable
19 portfolio standard, pursuant to Section 62-16-6 NMSA 1978.
20 The commission may authorize deferred recovery of the costs
21 of complying with the renewable portfolio standard, including
22 carrying charges;

23 (4) the renewable portfolio shall be
24 diversified as to the type of renewable energy resource,
25 taking into consideration the overall reliability,

1 availability, dispatch flexibility and cost of the various
2 renewable energy resources made available by suppliers and
3 generators; and

4 (5) renewable energy resources that are in a
5 public utility's electric energy supply portfolio on
6 July 1, 2004 shall be counted in determining compliance with
7 this section.

8 B. If a public utility finds that, in any given
9 year, the cost of renewable energy that would need to be
10 procured or generated for purposes of compliance with the
11 renewable portfolio standard would be greater than the
12 reasonable cost threshold as established by the commission
13 pursuant to this section, the public utility shall not be
14 required to incur that cost; provided that the existence of
15 this condition excusing performance in any given year shall
16 not operate to delay the annual increases in the renewable
17 portfolio standard in subsequent years. When a public
18 utility can generate or procure renewable energy at or below
19 the reasonable cost threshold, it shall be required to add
20 renewable energy resources to meet the renewable portfolio
21 standard applicable in the year when the renewable energy
22 resources are being added.

23 C. By December 31, 2004, the commission shall
24 establish, after notice and hearing, the reasonable cost
25 threshold above which level a public utility shall not be

1 required to add renewable energy to its electric energy
2 supply portfolio pursuant to the renewable portfolio
3 standard. The commission may thereafter modify the
4 reasonable cost threshold as changing circumstances warrant,
5 after notice and hearing. In establishing and modifying the
6 reasonable cost threshold, the commission shall take into
7 account:

8 (1) the price of renewable energy at the
9 point of sale to the public utility;

10 (2) the transmission and interconnection
11 costs required for the delivery of renewable energy to retail
12 customers;

13 (3) the impact of the cost for net metering
14 and renewable energy on overall retail customer rates;

15 (4) the overall diversity, reliability,
16 availability, dispatch flexibility, cost per kilowatt-hour
17 and life cycle cost on a net present value basis of renewable
18 energy resources available from suppliers; and

19 (5) other factors, including public
20 benefits, the commission deems relevant; provided that
21 nothing in the Renewable Energy Act shall be construed to
22 permit regulation by the commission of the production or sale
23 price at the point of production of the renewable energy.

24 D. By September 1 of each year until 2012, and
25 thereafter as determined necessary by the commission, a

1 public utility shall file a report to the commission on its
2 purchases of renewable energy during the prior calendar year
3 and a procurement plan that includes:

4 (1) the cost of procurement for any new
5 renewable energy resource in the next calendar year required
6 to comply with the renewable portfolio standard; and

7 (2) testimony and exhibits that demonstrate
8 that the proposed procurement is reasonable as to its terms
9 and conditions considering price, availability,
10 dispatchability, any renewable energy certificate values and
11 diversity of the renewable energy resource; or

12 (3) demonstration that the plan is otherwise
13 in the public interest.

14 E. The commission shall approve or modify a public
15 utility's procurement or transitional procurement plan within
16 sixty days and may approve the plan without a hearing, unless
17 a protest is filed that demonstrates to the commission's
18 reasonable satisfaction that a hearing is necessary. The
19 commission may modify a plan after notice and hearing. The
20 commission may, for good cause, extend the time to approve a
21 procurement plan for an additional sixty days. If the
22 commission does not act within the sixty-day period, the
23 procurement plan is deemed approved.

24 F. The commission may reject a procurement or
25 transitional procurement plan if it finds that the plan does

1 not contain the required information and, upon the rejection,
2 may suspend the public utility's obligation to procure
3 additional resources for the time necessary to file a revised
4 plan; provided that the total amount of renewable energy to
5 be procured by the public utility shall not change.

6 G. A public utility may file a transitional
7 procurement plan requesting that the commission determine that
8 the costs of renewable energy resources that the public
9 utility has committed to, or may commit to, prior to the
10 commission's establishing a reasonable cost threshold, are
11 reasonable and recoverable pursuant to Section 62-16-6 NMSA
12 1978. The requirements of annual procurement plan filings
13 shall be applicable to any transitional procurement plan
14 filing pursuant to this section." _____

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